

Nicholas J. Henderson, OSB #074027  
nhenderson@portlaw.com  
MOTSCHENBACHER & BLATTNER, LLP  
117 SW Taylor St., Suite 300  
Portland, OR 97204  
Telephone: (503) 417-0508  
Facsimile: (503) 417-0528

Of Attorneys for Karamanos Holdings, Inc.,  
Debtor-in-Possession

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In re	Bankruptcy Case Nos.
Sunshine Dairy Foods Management, LLC	18-31644-pcm11 (Lead Case)
and	
Karamanos Holdings, Inc.,	18-31646-pcm11
 Debtors-in-Possession.	 DEBTOR'S MOTION TO ASSUME AND ASSIGN EXECUTORY CONTRACT AND DETERMINE CURE AMOUNT

Debtor-in-Possession, Karamanos Holdings, Inc. ("KHI" or "Debtor"), requests entry of an order (1) authorizing Debtor to assume and assign the unexpired Land Lease Agreement dated May 16, 2017, by and between Debtor, as Landlord, and Verizon Wireless (VAW), LLC d/b/a Verizon Wireless, as tenant (the "Contract"), and for a determination of the cure amounts on such Contract. In support of this Motion, Debtor represents as follows:

1. On May 9, 2018 (the "Petition Date"), Debtor filed voluntary a petition under Chapter 11 of the United States Bankruptcy Code. The Debtor's case is jointly administered under case number 18-31644-pcm11.
2. Pursuant to Sections 1107 and 1108 of the Code, Debtor is continuing in possession of its property and is operating and managing its business as a debtor-in-possession.

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b) and the standing order of reference of the District Court. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper under 28 U.S.C. §§ 1408 and 1409.

4. Debtor seeks authority to assume and assign the Contract and a determination on a cure amount, if any, for such Contract.

5. The assumption and assignment of the Contracts at this time on the terms stated below are appropriate and in the best interests of Debtor's estate.

6. Pursuant to Code Sections 365 and 105, Debtor requests authority to assume and assign the Contract pursuant to terms of the proposed Order to be submitted by Debtor.

### **BACKGROUND**

7. On the Petition Date, Debtor and Sunshine Dairy Foods Management, LLC ("Sunshine") (collectively, the "Debtors") filed two (2) voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. KHI manages Sunshine and related properties as debtors-in-possession pursuant to §§1107(a) of the Bankruptcy Code. No request for appointment of an examiner has been made, no request to remove Debtors as debtors-in-possession has been made, and no committees have been appointed or designated.

8. KHI owns 94% of the outstanding membership interest of Sunshine. KHI also owns Sunshine Dairy Enterprises, Inc. ("SDE"). SDE owns the remaining 6% of Sunshine's outstanding membership interest.

9. Sunshine is a limited liability company headquartered in Portland, Multnomah County, Oregon. KHI is an Oregon corporation headquartered in Portland, Multnomah County, Oregon. Debtors are in the business of manufacturing, packaging, and distributing dairy, non-dairy,

and other related food products throughout the United States of America. The Debtors are the successors to the dairy delivery business founded in 1935 by John Karamanos.

10. KHI has executed a Real Estate Purchase and Sale Agreement with NBP Capital, LLC (“NBP Capital”) dated November 26, 2018 (the “PSA”) for the sale of certain assets to NBP Capital (as defined in the APA, the “Acquired Assets”).

11. On December 24, 2018, the Bankruptcy Court entered the Order Granting Karamanos Holdings, Inc.’s Motion for Approval of Bidding Procedures, Overbid Protections and Expense Reimbursements, and Form and Manner of Notice of Bidding Procedures [ECF No. 619] (the “Bid Procedures Order”).

12. On December 17, 2018, Debtor served a Notice of Intent to Sell Property, Compensate Broker, and/or Pay any Secured Creditor’s Fees and Costs; Motion for Authority to Sell Property Free and Clear of Liens; and Notice of Hearing (“Sale Notice”) and a Notice of Intent to Assume and Assign Executory Contracts and Determine Cure Amounts; Notice of Hearing Thereon (“Assumption Notice”). In accordance with the Sale Notice, Assumption Notice, PSA, and Bid Procedures Order, Debtor intends to seek approval of a sale of the Acquired Assets to NBP Capital or such other bidder as may be the Successful Bidder (as defined in the Bid Procedures Order) before the Court on January 28, 2019.

13. KHI intends to assume and assign the Contract to (a) NBP Capital, or (b) the Successful Bidder. Debtor seeks to have the order attached as **Exhibit C** considered at a hearing before the Court on January 28, 2019 in conjunction with the hearing on the sale of the Acquired Assets set forth in the Sale Notice.

////

////

## **CONTRACTS TO BE ASSUMED AND ASSIGNED**

14. The following table lists, with respect to the Contract, the amounts that the Debtor has determined will be, as of the closing date of the sale to NBP Capital or other Successful Bidder, as the case may be, the amounts necessary to be paid by the Debtor pursuant to Section 365 of the Bankruptcy Code in order to cure any existing breaches and default in accordance with Sections 365(b) and 365(f)(2) of the Bankruptcy Code or to provide any adequate assurance of future performance required under Section 365(b)(1)(C) of the Bankruptcy Code and assume and assign such Contract to NBP Capital or the Successful Bidder (the “Cure Amount”):

<b>Lease Counterparty</b>	<b>Cure Amount</b>
Verizon Wireless (VAW), LLC d/b/a Verizon Wireless	\$0.00

15. The Debtor is not in default or breach of the Contract, and the only obligations due under the Lease are the Cure Amount.

16. On or before January 17, 2019, additional parties may seek to become “Qualified Bidders” and submit “Qualified Bids” to the Debtor as those terms are defined in the Bid Procedures Order. One of the requirements of a Qualified Bid is that the Qualified Bidder submits a complete list of executory contracts and unexpired leases to be assumed and assigned in accordance with its proposed bid.

17. Debtor will provide the Contract counterparty notice of the Qualified Bids that propose to assume and assign the Contract to the Qualified Bidder. The counterparty to the Contract will have until January 19, 2019 (the “Contract Objection Deadline”) to object to the assumption and assignment of the Contract and the proposed Cure Amount.

18. A final determination of whether the Contract will be assumed and assigned to the Successful Bidder will be made at the conclusion of the bidding process on January 19, 2019. Debtor intends to reject any executory contracts that are not assigned to the purchaser of the assets.

### **RELIEF REQUESTED**

19. Any objection by the Contract counterparty must be filed and served upon the Debtor by the Objection Deadline and must specify the grounds for such objection, including stating the alleged cure amount (including, on a transaction by transaction basis, calculations and detail of specific charges and dates, and any other amounts receivable or payable supporting such alleged cure amount) if the counterparty disagrees with the proposed Cure Amount and any other defaults or termination events that the counterparty alleges must be cured to effect assumption and assignment of the Contract.

20. Unless the Contract counterparty properly and timely files an objection to the assumption of the Contract by the Objection Deadline, the Debtor may assume and assign the Contract in accordance with the provisions of the PSA and this Motion, subject to the occurrence of the closing, without further order or notice of hearing, subject only to the payment of the Cure Costs (as set forth in the PSA or any other purchase agreement approved by the Court, as applicable). If an objection is filed and served by the Objection Deadline, and the objection cannot be resolved consensually, then the objection shall be heard at the sale hearing.

21. The Debtor requests that unless the Contract counterparty files an objection to this Motion and also asserts a claim for any amounts due and owing, or other obligations under the Contract in an amount different than the Cure Amount referenced in this Motion (the “Disputed Cure Amount”) by the Objection Deadline, the Contract counterparty shall be forever barred from asserting a Cure Amount different from that set forth in this Motion and from asserting any additional cure,

other amounts, breaches, damages, claims or defaults with respect to the Contract, relating to the period prior to assignment to the Successful Bidder.

22. Pursuant to the Bid Procedures Order, the second or otherwise best qualified bid submitted by the bid deadline as modified by a bidder at the auction, shall remain open and irrevocable through the consummation of the final agreements and closing of the sale with the Successful Bidder. The Debtor intends to seek a conditional order approving the assumption and assignment of the Contract to the Successful Bidder. To the extent the Successful Bidder fails to close then the conditional order will provide that the Contract shall be assumed and assigned to the second highest bidder subject to the terms of the Bid Procedures Order.

23. KHI asserts that assumption and assignment of the Contract and adoption of the objection deadline and other procedures described herein is appropriate and in the best interest of its estate.

24. Debtor requests that the 14-day stay provided by Bankruptcy Rule 6006(d) be waived.

WHEREFORE, KHI requests an order authorizing KHI's assumption and assignment of the Land Lease Agreement with Verizon Wireless (VAW), LLC dated May 16, 2017, on the terms set forth above, and for such further relief as the Court deems just and proper.

Dated December 24, 2018

MOTSCHENBACHER & BLATTNER LLP

By: /s/ Nicholas J. Henderson  
Nicholas J. Henderson, OSB No. 074027  
Of Attorneys for Debtor-in-Possession  
Karamanos Holdings, Inc.

In re Sunshine Dairy Foods Management, LLC  
Ch 11 Bankruptcy Case No. 18-31644-pcm11(Lead Case)  
In re Karamanos Holdings, Inc.  
Ch 11 Bankruptcy Case No. 18-31646-pcm11

CERTIFICATE - TRUE COPY

DATE: December 24, 2018

DOCUMENT: DEBTOR'S MOTION TO ASSUME AND ASSIGN EXECUTORY  
CONTRACTS AND DETERMINE CURE AMOUNTS

I hereby certify that I prepared the foregoing copy of the foregoing named document and have carefully compared the same with the original thereof and it is a correct copy therefrom and of the whole thereof.

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing document(s) to be served for delivery by the United States Postal Service, via First Class United States Mail, postage prepaid, with sufficient postage thereon to the following parties:

See Attached List. (The original Service List is attached to the original copy filed with the Court only. Creditors may request a copy of the Service List by contacting the undersigned.)

I caused these documents to be served by utilizing the services of BK Attorney Services, LLC d/b/a certificateofservice.com, an Approved Bankruptcy Notice Provider authorized by the United States Courts Administrative Office, pursuant to Fed.R. Bankr.P. 9001(9) and 2002(g)(4).

I hereby further certify that the foregoing was served on all CM/ECF participants through the Court's Case Management/Electronic Case File system on the date set forth below.

Dated: December 24, 2018

MOTSCHENBACHER & BLATTNER LLP

By: /s/ Nicholas J. Henderson  
Nicholas J. Henderson, OSB #074027  
Of Attorneys for Debtor-in-Possession  
Karamanos Holdings, Inc.

In re Sunshine Dairy Foods Management, LLC;  
Bankruptcy Case No. 18-31644-pcm11 (Lead Case);  
In re Karamanos Holdings, Inc.;  
Bankruptcy Case No. 18-31646-pcm11

SERVICE LIST

**Debtors:**

Sunshine Dairy Foods  
Management, LLC  
Attn: Norman Davidson, III  
801 NE 21st Ave.  
Portland, OR 97232

Karamanos Holdings, Inc.  
Attn: Norman Davidson, III  
801 NE 21st Ave.  
Portland, OR 97232

**Unsecured Creditors  
Committee:**

Valley Falls Farm, LLC  
c/o Bryan P. Coluccio, V.P./  
General Counsel  
Keystone-Pacific, LLC  
18555 SW Teton Avenue  
Tualatin, OR 97062

High Desert Milk  
c/o Steven Tarbet, CFO  
1033 Idaho Avenue  
Burley, ID 83318

Electric Inc.  
c/o Christopher C. Winston,  
President  
P.O. Box 820386  
Vancouver, WA 98682

Ernest Packaging Solutions  
c/o Jennifer Delgadillo  
Director of Corp. Credit  
5777 Smith Way St.  
Commerce, CA 90040

Stiebrs Farms, Inc  
c/o Janis E. Stiebrs, President  
P.O. Box 598  
Yelm, WA 98597

**S.E.C.**

SEC  
Attn: Bankruptcy Counsel  
444 South Flower Street, Suite  
900  
Los Angeles CA 90071-9591

**Oregon D.E.Q.**

Department of Environmental  
Quality  
Attn: Richard Whitman,  
Director  
700 NE Multnomah Street, Suite  
600  
Portland, OR 97232-4100

**EPA:**

Environmental Protection  
Agency  
Office of the Administrator,  
Mail Code 1101A  
1200 Pennsylvania Avenue,  
N.W.  
Washington, DC 20460

U.S. EPA, Region 10  
c/o Chris Hladick, Regional  
Administrator  
1200 Sixth Avenue, Suite 155  
Seattle, WA 98101

U.S. EPA Oregon Operations  
Office  
805 SW Broadway, Suite 500  
Portland, OR 97205

**Secured Creditors:**

First Business Capital Corp.  
401 Charmany Dr.  
Madison, WI 53719

First Business Capital Corp.  
c/o Chuck Batson, Pres. & CEO  
401 Charmany Dr  
Madison, WI 53719

First Business Capital Corp.  
c/o Albert N. Kennedy  
Tonkon Torp LLP  
888 SW 5th Ave Ste 1600  
Portland OR 97204

First Business Capital Corp.  
c/o Michael Fletcher  
Tonkon Torp LLP  
888 SW 5th Ave Ste 1600  
Portland OR 97204

Multnomah Assessment &  
Taxation  
501 SE Hawthorne, 1st Floor  
P.O. Box 5007  
Portland, OR 97208

Multnomah County Tax  
Assessor  
Attn: Angelika Loomis, Agent  
PO Box 2716  
Portland, OR 97208-2716

Carlos A. Rasch  
Senior Asst. County Attorney  
Office of Multnomah County  
Attorney  
501 SE Hawthorne Blvd., Suite  
500  
Portland, Oregon 97214

**Initial Bidder:**

NBP Capital, LLC  
Attn: Lauren Noecker  
9 SE 3rd Avenue Suite 100  
Portland, OR 97214

NBP Capital, LLC  
c/o Sussman Shank LLP  
Attn: Howard N. Levine  
1000 SW Broadway, Suite 1400  
Portland, OR 97205

NBP Capital, LLC  
c/o Hathaway Larson LLP  
Attn: Jeni Meyer  
1331 NW Lovejoy St., Ste. 950  
Portland, OR 97209



In re Sunshine Dairy Foods Management, LLC;  
Bankruptcy Case No. 18-31644-pcm11 (Lead Case);  
In re Karamanos Holdings, Inc.;  
Bankruptcy Case No. 18-31646-pcm11

## SERVICE LIST

### **IRS:**

IRS  
Attn: Attorney General  
of United States  
10th Constitution NW #4400  
Washington, DC 20530

IRS  
Attn: Civil Process Clerk  
U.S. Attorney  
District of Oregon  
1000 SW 3rd, #600  
Portland, OR 97204-2936

IRS  
Centralized Insolvency  
Operation  
P. O. Box 7346  
Philadelphia, PA 19101

### **Oregon Dept. of Revenue:**

ODR  
ATTN: Bankruptcy Unit  
955 Center St NE  
Salem, OR 97301

ODR  
c/o Ellen Rosenblum, Attorney  
General  
Oregon Department of Justice  
1162 Court St, NE  
Salem, OR 97301-4096

### **U.S. Attorney's Office:**

U.S. Attorney,  
District of Oregon  
1000 SW 3rd, #600  
Portland, OR 97204-2936

### **Non-Debtor Parties to Executory Contracts and Leases to Be Assumed and Assigned:**

Verizon Wireless (VAW) LLC  
d/b/a Verizon Wireless  
180 Washington Valley Road  
Bedminster, NK 07921  
Attn: Network Real Estate

Verizon Wireless (VAW) LLC  
c/o CT Corp. System, Reg.  
Agent  
780 Commercial St. SE  
Suite 100  
Salem, OR 97301-3465

### **Special Notice:**

Scott Laboratories Inc.  
Attn: Jill Skoff, Accting  
Assistant  
PO Box 4559  
Petaluma, CA 94955

Sorrento Lactalis, Inc.  
c/o Phillips Lytle LLP  
Attn: Angela Z. Miller  
125 Main Street  
Buffalo, NY 14203

### **Electronic Mail:**

**The foregoing was served on  
all CM/ECF participants  
through the Court's Case  
Management/Electronic Case  
File system.**